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Arizona Corporation Commission

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MAR 4 2013

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BEFORE THE

**ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION OF ) DOCKET NO. W-014454A-11-0310  
ARIZONA WATER COMPANY, AN ARIZONA )  
CORPORATION FOR THE DETERMINATION ) **REPLY OF THE CITY OF GLOBE IN**  
OF FAIR VALUE OF ITS UTILITY PLANT ) **SUPPORT OF ITS APPLICATION FOR**  
AND PROPERTY AND FOR ADJUSTMENTS ) **LEAVE TO INTERVENE**  
TO ITS RATES AND CHARGES FOR UTILITY )  
SERVICE FURNISHED BY ITS EASTERN )  
GROUP AND FOR CERTAIN RELATED )  
APPROVALS

The City of Globe, Arizona, (the "City" or "Globe") respectfully submits this Reply in Support of its Application for Leave to Intervene in this docket. This Reply addresses the Response in Opposition to the Leave to Intervene filed by Arizona Water Company ("AWC") on March 1, 2013. For the reasons set forth herein, Globe requests the Commission grant its Application for Leave to Intervene ("Application").

**INTERVENTION RULE AND PRACTICES**

The rule governing intervention is A.A.C. 14-3-105 which states:

A. Intervention. Persons, other than the original parties to the proceedings, who are directly and substantially affected by the proceedings, shall secure an order from the Commission or presiding officer granting leave to intervene before being allowed to participate.

B. Application. An application for leave to intervene shall be in writing and must state the basis for the application. Such

1 application shall be served and filed by an applicant at least five  
2 days before the proceeding is called for hearing. No application for  
3 leave to intervene shall be granted where by so doing the issues  
4 theretofore presented will be unduly broadened, except upon leave  
5 of the Commission first had and received. Upon the granting of an  
6 application to intervene by the Commission or the presiding  
7 officer, the intervening person shall thereafter be designated an  
8 "Intervenor".

9 The ACC has historically adopted a liberal approach to intervention. Allowing parties to  
10 participate in proceedings when they are substantially affected and they do not broaden the  
11 issues allows for a full and complete record. This is important for several reasons, not the least  
12 of which it allows the Commissioners to have the best information available when they are  
13 deciding the case.

14 Decision #73736 laid out a procedural schedule that denoted February 20<sup>th</sup> as the  
15 intervention deadline. Unfortunately, that Decision was not docketed until the same day as the  
16 intervention deadline. Globe did not become aware of the proceedings until after close of  
17 business on February 25<sup>th</sup>. As was noted in the Application, Globe is required to follow Open  
18 Meeting laws as well as other statutes that govern when the City Council can meet and what  
19 actions need to occur to authorize any legal action on behalf of the City.

20 Undersigned counsel did not have contact with City Staff until February 26 at which  
21 time a meeting was posted to comply with the 24 hour advance notice of an upcoming Council  
22 meeting as required by the Open Meeting law. A Special Council meeting was held on  
23 February 27<sup>th</sup> at 5:00 pm where the City Council voted unanimously to authorize intervention  
24 in the above captioned matter. The Application was filed on the 28th.  
25  
26

1 The instant case is similar from a procedural stand point to the AT&T/Bellsouth  
2 merger.<sup>1</sup> In the AT&T case, there was a truncated procedural schedule which afforded  
3 approximately two months for intervening, filing testimony and the hearing.<sup>2</sup> The intervention  
4 deadline was three weeks before the hearing date and two weeks before the pre-hearing  
5 conference.<sup>3</sup> At the pre-hearing conference, Communication Workers of America (“CWA”)  
6 filed a Motion to Intervene, a full two weeks past the intervention deadline.<sup>4</sup> Even though  
7 CWA was aware of the proceeding before the intervention deadline, the Commission allowed  
8 intervention.<sup>5</sup> In the AWC matter, Globe was unaware of the deadline until it had already  
9 passed.  
10

#### 11 WUAA

12 In the Response, AWC makes the argument that the City’s Application was over one  
13 week late and should not be granted because the process for intervention was discussed at the  
14 February 12, 2013 Open Meeting. The City did not have a representative either in the room or  
15 on the Listen Line for that meeting because the City was unaware the ACC was voting on the  
16 matter that day. While it is easy for AWC to say the City should know, it is not easy for the  
17 City to know when events occur at the ACC.  
18

19 It is interesting to note that Globe’s Application was not the only one filed after  
20 February 20, 2013. The Water Utility Association of Arizona (“WUAA”) filed an Application  
21 for Leave to Intervene on February 25, 2013. AWC’s opposition to WUAA’s “late filed”  
22

23 <sup>1</sup> Docket No. T-02428A-06-0203, et al; Decision No.68865.

24 <sup>2</sup> Procedural Order in Docket No. T-02428A-06-0203 dated May 4, 2006.

25 <sup>3</sup> Id. Intervention deadline was June 12, 2006, Pre-hearing Conference was June 30, 2006 and the Hearing was July  
26 6, 2006.

<sup>4</sup> Motion to Intervene file in Docket No. T-02428A-06-0203 docketed June 30, 2006.

<sup>5</sup> Counsel for AT&T were made aware of the intervention when they arrived at the pre-hearing conference and a  
letter from CWA requesting intervention was handed to them.

1 Application is conspicuously absent. While it is unclear from WUAA's Application if AWC is  
2 a member of that organization,<sup>6</sup> it is clear that WUAA is an industry group made up of private  
3 water utilities. AWC's stance of opposing intervention from the City while not opposing the  
4 intervention of an industry group is not only inconsistent but also troubling. It is unclear from  
5 AWC's filing why the City should be denied intervention while WUAA should be allowed in.

6  
7 **INITIAL INTERVENTION DEADLINE AND NOTIFICATION**

8 AWC raises two points in its Response regarding notification of the City and its citizens  
9 in October 2011 by mail and newspaper publications. It is unclear from the Response if AWC  
10 believes the City is attempting to re-litigate rate case issues since it refers to notification and  
11 deadline in the initial rate case. The City does not intend nor will it attempt to re-litigate any  
12 issues already decided by the Commission. The City is fully aware and understands the instant  
13 proceedings are to only discuss the DSIC.  
14

15 AWC's reference to the notification of the intervention deadline in October 2011 is  
16 helpful to understand why the City filed after the deadline. Had AWC notified the City and its  
17 customers of this intervention deadline as it did the first one, the City would have filed its  
18 Application during the period set out in the notification. The lack of notification by AWC  
19 underscores the reason why the City was unaware of the deadline.  
20  
21  
22  
23  
24

25 <sup>6</sup> WUAA references in its Application that Arizona American is a member of the organization. Upon information  
26 and belief, AWC is also a member of WUAA and the Application meant to list Arizona Water as a member.  
Application for Leave to Intervene filed by WUAA on February 25, 2013 at pg. 2 line 6.

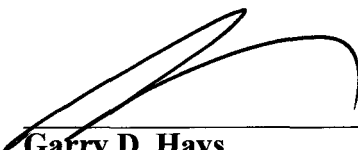
**GLOBE'S INTERVENTION WILL NOT UNDULY BROADEN THE PROCEEDING**

As mentioned above, the City understands this phase of the proceedings is only to discuss a DSIC. The City intends to participate fully in the discussion regarding the DSIC and will not bring forth any issues that have already been litigated. Granting intervention will not unduly broaden the proceedings. Additionally, The City is directly and substantially affected by these proceedings because its' residents are part of the Miami system<sup>7</sup> which seems, based upon the testimony in the record, one of the worst systems as it relates to infrastructure.

**CONCLUSION**

Granting the City's intervention would be in accordance with A.A.C. 14-3-105 and past ACC decisions regarding intervention. For this and the reasons stated above, the City respectfully requests the Commission grant the Application for Leave to Intervene.

RESPECTFULLY SUBMITTED this 4th day of March, 2013

  
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ORIGINAL and thirteen (13)  
copies filed on March 4, 2013 with:

<sup>7</sup> The City also has two connections to the Miami system as a part of jts municipal water system.

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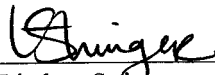
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